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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------|------------------|
| 10/010,563 | 10/26/2001 | Douglas H. Bedgood | 340201-1010 | 6833 |
| 24504 | 7590 | 03/26/2003 | | |
| THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 100 GALLERIA PARKWAY, NW STE 1750 ATLANTA, GA 30339-5948 | | | EXAMINER YU, JUSTINE ROMANG | |
| | | | ART UNIT 3764 | PAPER NUMBER |
| | | | DATE MAILED: 03/26/2003 | |

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

| | | | |
|-----------------------------|--------------------------|---------------------|--|
| Offic Action Summary | Application No. | Applicant(s) | |
| | 10/010,563 | BEDGOOD, DOUGLAS H. | |
| | Examiner Justine R Yu | Art Unit 3764 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 04 March 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 6,10 and 12-17 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5, 7-9, 11, 18-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election with traverse of species I in Paper No. 5 is acknowledged. Applicant correctly pointed out that claim 1 is a generic claim. However, the applicant in his election states that claim 14 reads on figure 1. The examiner disagrees because claim 14 reads on figure 1.
3. Therefore, claims 1, 6, 10, and 12-17 are withdrawn from further consideration.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the longitudinal axis as recited in claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 1-5, 7-9, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is not understood which disclosed location that the "narrow at an apex portion" in line 7 is being referred. In addition, in line 7, "such as" is vague and indefinite.

In claim 5, "said substantially arcuately shaped outer surface" lacks antecedent basis.

In claim 8, line 3 it appears that the applicant attempts to redefine the number of massage members. In line 5, “substantially V-shape” is misdescribed, see figure 1.

Claims 4 and 9 are redundant to claim 1.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa (JP06-47082).

Kurosawa teaches a foot massager comprising a base 10, rigid massage members (20, 22), and mounting members 13 fixed to the bottom surface of the base and adapted to support the base and the massage member while pressure is applied thereto (figure 8). Kurosawa in figure 9 shows the massage member 22 having a substantially ellipsoid arc shape and being substantially narrow in width at an apex portion of the ellipsoid arc shape.

Kurosawa lacks a rigid base. However, the feature of choosing a rigid base for supporting the massage members is considered as an obvious design choice since rigid base is notoriously old and well known in the massaging art.

Regarding claim 2, Kurosawa lacks a substantially kidney shaped base. However, the feature of choosing a particular shaped base, i.e., kidney-shape, is considered as an obvious

design choice since the shape of the base is not a criticality. See applicant's disclosure on page 4, lines 21-24 of the specification.

Regarding claim 8, Kurosawa does not explicitly disclose that two massage members being arranged in a substantially V-shape configuration. However, the feature of arranging the massage members to a particular shape, i.e., V-shape configuration is considered as an obvious design choice, since the configuration is not a criticality (see page 6, lines 9-12 of the applicant's specification) and it appears that Kurosawa's massage members would be able to perform equally well with the V-shaped configuration.

3. Claims 11, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa in view of Voykin (4,852,553).

Kurosawa has the mounting members 13 for preventing the base from slippery (column 4, lines 20-21) instead of suction cups (mounting means). However, Voykin teaches suction cups 37 (figure 2e). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute Kurosawa's element 13 with suction cups as taught by Voykin, so as to be able to more securely fix the device on the floor.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP11-47229, Meilus (6,036,719), Vincent et al (5,925,003), and Lambden (6,159,169) are cited to show different massagers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine R Yu whose telephone number is (703)308-2675. The examiner can normally be reached on 8:30am - 6:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703)308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.


Justine R Yu
Primary Examiner
Art Unit 3764

JY
March 20, 2003